

**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

IN THE MATTER OF:)	BEFORE THE TENNESSEE BOARD
)	OF PHYSICAL THERAPY
PERRY H. SMITH, P.T.)	
RESPONDENT)	CASE NO: 201704827
)	201705345
BRENTWOOD, TENNESSEE)	
TENNESSEE LICENSE NO. 7943)	

CONSENT ORDER

Comes now the Division of Health Related Boards of the Tennessee Department of Health (hereinafter the "Division"), by and through the Office of General Counsel, and Respondent, Perry H. Smith, P.T. (hereinafter "Respondent"), who would respectfully move the Tennessee Board of Physical Therapy (hereinafter the "Board") for approval of this Consent Order affecting Respondent's physical therapist license in the State of Tennessee.

The Board is responsible for the regulation and supervision of physical therapists and physical therapist assistants licensed to practice in the State of Tennessee. *See* Tennessee Occupational and Physical Therapy Practice Act, Tennessee Code Annotated (hereinafter "TENN. CODE ANN.") § 63-13-101, *et seq.* It is the policy of the Board to require strict compliance with the laws of this State and apply the laws to preserve the quality of physical therapy provided in Tennessee. It is the duty and responsibility of the Board to enforce the Tennessee Occupational and Physical Therapy Practice Act in such a manner as to promote the public interest and protect the public health, safety, and welfare in every practicable way, including disciplining physical therapists and physical therapist assistants who violate the provisions of TENN. CODE ANN. § 63-13-101, *et seq.* and the Rules and Regulations promulgated by the Board and recorded in the

Official Compilation of Rules and Regulations of the State of Tennessee (“TENN. COMP. R. & REGS.”), 1150-01-.01, *et seq.*

Respondent, Perry H. Smith, P.T., by his signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that presentation to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Order not be ratified. Likewise, all matters, admissions, and statements disclosed or exchanged during the attempted ratification process shall not be used against Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Consent Order. Respondent understands that by signing this Consent Order, he is allowing the Board to issue its order without further process. Respondent acknowledges this is a formal disciplinary action and will be reported to the National Practitioner Data Bank (NPDB) and/or a similar agency. In the event the Board rejects this Consent Order for any reason, it will be of no force or effect for either party.

I. STIPULATIONS OF FACT

1. The Respondent has been at all times pertinent hereto licensed by the Board as a physical therapist, having been granted license number 7943 on October 26, 2007, which does not expire until September 30, 2019.

2. Respondent was practicing, and at all times relevant, has practiced physical therapy at ProMotion PT, located at 10 Cadillac Drive, Suite #160, Brentwood, Tennessee 37027. Respondent's practice treats patients from age 13 and up.
3. The Department received multiple complaints against Respondent, alleging sexual misconduct on the part of Respondent.
4. Patient J.C. complained that, during her therapy sessions, Respondent would demonstrate stretching exercises that would result in touching of a sexual nature. Respondent avers that the touching was consensual.
5. Patient M.L. complained that, on multiple occasions, Respondent would touch her in a sexual manner. Respondent avers that the touching was consensual.
6. Patient M.C. complained that, during a therapy session, there was inappropriate exposure of her anatomy and touching. Respondent specifically denies Patient M.C.'s allegations and avers that, if proven, there was no force, no coercion and was consensual.
7. Patient P.S. reported that, during a therapy session, there was inappropriate exposure of her anatomy and touching, for which there was no apology. Respondent specifically denies Patient P.S.'s allegations and avers that, if proven, there was no force, no coercion and was consensual.
8. On November 20, 2017, Respondent appeared at the investigators' office for an interview. Respondent was accompanied by legal counsel, but not the undersigned counsel who did not represent Respondent until after the investigation was in progress and the interviews had been conducted.
9. During the interview, Respondent admitted the following:

- A. Respondent had engaged in inappropriate sexual conduct with at least three (3) patients.
- B. According to Respondent, all sexual contact was consensual. He claimed that if any conduct grew to be unwelcomed, he would stop. Respondent avers that he was never forceful, coercive, or attempted to force inappropriate touching.
- C. Respondent admitted that, during therapy sessions with Patient J.C., they kissed and engaged in touching of a sexual nature. Respondent avers that all such contact was consensual.
- D. Respondent admitted that, during at least one therapy session with Patient M.L., they kissed and engaged in touching of a sexual nature. Respondent avers that all such contact was consensual.
- E. Respondent voluntarily admitted that he and Patient K.L., who has not complained to the Department, kissed and that there was sexual contact between them that Respondent avers was consensual.
- F. Without waiving any aspect of Respondent's HIPAA-protected information and/or his privacy right regarding confidential mental health records, Respondent advises that he has voluntarily entered and is actively participating in psychotherapy sessions.
- G. Respondent, voluntarily and of his own accord, ceased seeing all patients, effective December 11, 2017.
- H. Respondent has begun the process of winding down his practice. Respondent anticipates that the dissolution will be accomplished as soon as is practicable.

II. GROUNDS FOR DISCIPLINE

The facts stipulated to in the Stipulations of Fact are sufficient to establish grounds to discipline Respondent's physical therapist license. Specifically, Respondent has violated the following statutes or rules which are part of the TENN. CODE ANN. § 63-13-101, *et seq.* and the TENN. COMP. R. & REGS., for which disciplinary action before and by the Board is authorized:

10. If proven, the facts contained within paragraphs 4 through 7 and paragraph 9, *supra*, constitute a violation of TENN. CODE ANN. § 63-13-312(10)(A):

Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while a physical therapist or physical therapist assistant/patient relationship exists.

11. If proven, the facts contained within paragraphs 4 through 7 and paragraph 9, *supra*, constitute a violation of TENN. CODE ANN. § 63-13-312(10)(B):

Making sexual advances, requesting sexual favors, and engaging in other verbal conduct or physical conduct or physical contact of a sexual nature with patients.

12. If proven, the facts contained within paragraphs 4 through 7 and paragraph 9, *supra*, constitute a violation of TENN. CODE ANN. § 63-13-312(10)(C):

Intentionally viewing a completely or partially disrobed patient in the course of treatment, if the viewing is not related to patient diagnosis or treatment under current practice standards.

13. If proven, the facts contained within 4 through 7 and paragraph 9, *supra*, constitute a violation of TENN. CODE ANN. § 63-13-312(12):

Failing to adhere to standards of ethics of the physical therapy profession.

14. Pursuant to TENN. COMP. R. & REGS. 1150-01-.14:

The Board adopts for licensed physical therapists, as if fully set out herein, and as it may from time to time be amended, the current "Code of Ethics" issued by the American Physical Therapy Association. The Board adopts for licensed physical

therapist assistants, as if fully set out herein, and as it may from time to time be amended, the current “Standards of Ethical Conduct for the Physical Therapist Assistant” issued by the American Physical Therapy Association.

III. POLICY STATEMENT

The Tennessee Board of Physical Therapy takes this action to protect the health, safety, and welfare of the people in the State of Tennessee. The Board recognizes that sexual activity between physical therapists and their patients, while a practitioner/patient relationship exists, is detrimental to ethical practice in the state.

IV. ORDER

NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

15. The Tennessee physical therapist license of Perry H. Smith, P.T., license number 7943, is hereby **VOLUNTARILY SURRENDERED**, effective the date this Consent Order is entered by the Board. Respondent understands and acknowledges this **VOLUNTARY SURRENDER** has the same effect as revocation of his license.
16. Respondent is assessed and must pay, pursuant to TENN. CODE ANN. § 63-1-144(a) and TENN. COMP. R. & REGS. 1150-01-.15(4), three (3) Type “A” Civil Penalties in the amount of one thousand dollars (\$1,000) for engaging in sexual misconduct while a physical therapist/patient relationship exists, for a total Civil Penalty in the amount of **Three Thousand Dollars (\$3,000.00)**.
17. Respondent must pay, pursuant to TENN. CODE ANN. § 63-13-313(8) and TENN. COMP. R. & REGS. 1150-01-.15(5), the actual and reasonable costs of prosecuting this case to the

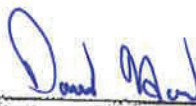
extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Division. The maximum amount for the assessment of costs shall be **Three Thousand Dollars (\$3,000.00)**.

18. Respondent understands this is a formal disciplinary action and will be reported to the National Practitioner Data Bank (NPDB) and/or a similar agency.

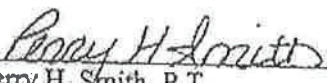
V. NOTICE

19. Any and all costs shall be paid in full within ninety (90) days from the issuance of the Assessment of Costs. Payment shall be made by **certified check, cashier's check, or money order**, payable to the **State of Tennessee, Department of Health**. Any and all payments shall be forwarded to the **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243**. A notation shall be placed on said money order or such check that it is payable for the civil penalties and costs of **Perry H. Smith, Case Nos. 201704827 & 201705345**.

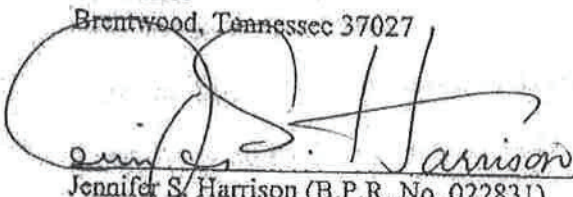
This CONSENT ORDER was approved by a majority of a quorum of the Tennessee Board of Physical Therapy at a public meeting of the Board and signed this 20 day of December, 2017.


Chairperson
Tennessee Board of Physical Therapy

APPROVED FOR ENTRY:

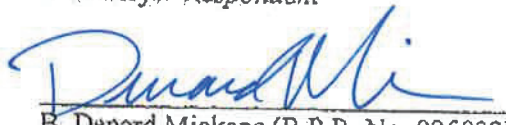

Perry H. Smith, P.T.
Respondent
Tennessee License Number 7943
10 Cadillac Drive
Suite #160
Brentwood, Tennessee 37027

12/19/17
DATE


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12/19/17
DATE

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12/20/17
DATE